

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1374 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI

And

Hon'ble MR.JUSTICE H.R.SHELAT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----

BHAILAL P KHARWA

Versus

MOHANBHAI R. DABHI & OTHERS

-----

Appearance:

MR PB MAJMUDAR, Advocate for the petitioner.

-----

CORAM : MR.JUSTICE S.M.SONI and

MR.JUSTICE H.R.SHELAT

Date of decision: 20/01/97

ORAL JUDGEMENT(S.M. Soni, J.)

Heard the learned Advocate, Mr. Majmudar for the appellant. Appellant-original claimant in M.A.C.P. No.343 of 1991 has filed this appeal against the Judgment & Award dated 30th December 1995 passed by the Motor Accident Claims Tribunal (Aux), Vadodara. By the said award the Tribunal has awarded Rs. 2,47,200/- with 12%

interest from the date of application till realisation and proportionate costs.

2. The contention on which the learned Advocate has emphasized is that disability percentage considered by the learned Tribunal is on a very lower side. Appellant being an artisan doing the work of a carpenter losing one of the lower legs, disability should be considered to be total and the award should have been calculated on the basis of 100% disability. Here there is evidence to the effect that the right leg of the claimant came to be amputated. That being so, it is considered to be 70% disability and there being disability of upper limb 7% disability is considered. Learned Tribunal has considering the general body as a whole considered 38% to be the disability for the purpose of award. When there is medical evidence in respect to disability and the conclusion of the learned Tribunal is based on that medical evidence, we do not find any reason to interfere with the award.

3. Learned Advocate has relied on a judgment in the case of Pratap Narain Singh Deo vs. Shrinivas Sabata & Anr. reported in AIR 1976 S.C. 222 which was a case of carpenter but the learned advocate has missed one fact and that is in that case, the carpenter has lost his hand. Citing another case of Natvarbhai Adesing Nayak vs. Kantilal Ramanlal Rathava & Ors, reported in 1985 G.L.H. (U.J.) 44, learned advocate has contended that the injured was a casual labourer and he was awarded compensation on the basis of 60% as disability. In that case the relevant observation reads as under;

"The injured was 22 years of age at the time and it cannot be said that for his remaining span of life he would have continued to earn only a paltry amount of Rs.200/-. The average income per month even of a person doing casual labour could not have been estimated at anything less than Rs.400/ month, over a period of years. The Tribunal seems to have erred in estimating the percentage of disability at 50%. A particular organ of the body if it is rendered useless, disability caused thereby may be assessed at a particular percentage from the medical aspect but taking into consideration the nature of the work that the person was doing, loss of a particular organ might result in a greater loss. The percentage of disability could not have been

assessed anything less than 60% as one leg of a labourer was amputated below the knee."

In view of this observation, it is clear that this disability has affected his functional ability. Here, in the instant case, there is nothing on the record to show that the functional ability of the claimant has affected because of amputation of leg to the extent of more than 38%. In our opinion, such contentions in abstract cannot be taken into consideration without any material on record or without showing anything to us. The learned advocate has also relied on a Judgment in the case of General Manager, Kerala State Road Transport Corporation vs. Mrs. Susamma Thomas & Ors. reported in AIR 1994 S.C. 1631. There it was a case of a fatal accident and in our opinion that case cannot be compared with the present case. The learned advocate also contended that while calculating the compensation, the learned Tribunal has not taken into consideration the future increase in income. To support his contention, he has relied on a Judgment in the case of Smt. Sarla Dixit & Anr. vs. Balwant Yadav & Ors., reported in AIR 1996 S.C. 1274. In the case before the Supreme Court, the deceased was the only bread-winner in the family. He was serving in military as a Captain and he was fully qualified for promotion to the rank of a Major at the time of his death. He had large number of years of military service ahead of him which would have certainly taken him to higher echelons in the military career. The Supreme Court took into consideration the future prospects in view of the facts and circumstances of the case. Here, in the instant case, there is no material on record which may suggest the future prospects also, the basis on which the compensation can be calculated. Learned Advocate for the appellant consented that there are two Income-Tax returns on the record; first is for the amount of Rs.30,000/-; and the second is for the amount of Rs.36,000/-. Subsequent Income-tax returns are not there on the record. However, the learned Tribunal has taken the income on the higher side and has given the award.

4. Taking overall view of the matter, we are of the opinion that the award cannot be said to be on a lower side. Hence the appeal fails and is dismissed.

.....